

# Welcome to the Thunderdome: TPG/Vodafone vs GSK/Pfizer and the real impact of conflicting ACCC merger decisions

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Figuring out when the ACCC will clear a proposed merger isn't always easy. Recently the ACCC said no to a TPG-Vodafone merger but yes to a GSK-Pfizer merger the very next day. Even though the mergers are in different industries, there are some common threads. So the different outcomes elevated our eyebrows a bit.

## TPG and Vodafone

TPG and Vodafone are each mainly focused in different markets. Vodafone is strong in mobile services. TPG is strong in broadband. But – in an interesting turn of events – the ACCC found that the merger would affect competition in the mobile services market because it was 'likely' that TPG would roll out a mobile network if there was no merger.

TPG and Vodafone both have two huge competitors (the same competitors) in each of their markets – Optus and Telstra. TPG and Vodafone were ready to let their powers combine to take on the stronger competition in both markets. But the ACCC found that competition required slightly smaller third and fourth operators, rather than a stronger combined third competitor, to take on the incumbents. Word is that TPG and Vodafone are off to court to challenge the ACCC's decision.

## GSK and Pfizer

Straight after it downed TPG-Vodafone, the ACCC recognized the importance of a single strong competitor in the GSK-Pfizer merger. When it comes to pain management, GSK and Reckitt Benckiser are strong competitors with Panadol and Nurofen. Pfizer also competes in that market (with Advil), yet the ACCC found it wasn't likely they were going to pose a big threat to GSK or Reckitts, and let the merger through.



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## What this means for other mergers

Market definition isn't an exact science. You may be assessed on a market you haven't even entered. And there's more to the analysis of competitive impact than just boosting your ability to compete with one or two big players.

The moral is that assessing what might 'substantially lessen competition' is always open to different views. And this affects your exposure for anti-competitive conduct more broadly than just mergers. Exclusive dealing, anti-competitive agreements and boycott provisions are subject to the same test.

Bottom line? These are uncertain times. If you're running close to the line on the competition test, you'd better be prepared to hunker down for a battle.

Questions? Give us a call.

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